IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

WP(C).No. 5684 of 2006(B)

PETITIONER:

A.POOKUNJU, CONFIDENTIAL ASSISTANT,
DISTRICT INDUSTRIES CENTRE, KOLLAM 2.

BY ADV. SRI.N.SUGATHAN,
SMT.R.SEEMA,
SMT.VARSHA BHASKAR.

RESPONDENTS:
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1. **THE STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, INDUSTRIES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE, KOLLAM 2.**

3. **THE ACCOUNTANT GENERAL (AUDIT), KERALA, BRANCH OFFICE, THRISSUR 680 020.**

BY GOVERNMENT PLEADER SRI. BEJOY CHANDRAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/09/2007,THE COURT ON 25/10/2007, DELIVERED THE FOLLOWING:

W.P.(C). NO.5684/2006-B:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE G.O. (RT). NO. 2274/82/H. EDN. DTD. 15/12/1982.

EXT.P.2: COPY OF THE AUDIT ENQUIRY REPORT NO. 11 RELATING TO THE FIXATION OF PAY OF THE PETITIONER.

EXT.P.3: COPY OF THE G.O. (P). NO. 1480/99/FIN. DTD. 17/06/1999.

EXT.P.4: COPY OF THE G.O. (P). NO. 990/2000/FIN. DTD. 27/06/2000.

EXT.P.5: COPY OF THE REPLY NO. K2/173/03 DTD. 02/08/2005 OF THE R.2. TO THE R.3.

EXT.P.6: COPY OF THE LETTER DTD. 06/08/2005 OF THE R.3.

EXT.P.7: COPY OF THE U.O. NOTE NO. K7-6173/03 DTD. 30/11/2005 OF THE R.2.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

V.GIRI, J.

W.P.(C).No.5684 of 2006 B

Dated this the 25th day of October, 2007.

JUDGMENT

The petitioner is currently employed as a Confidential Assistant in the Industries Department of the Government of Kerala. He had originally entered Government service as a Confidential Assistant in the Land Use Board on 16.11.1989. In 1990 he got departmental transfer to the Industries Department as a Confidential Assistant and is continuing as such in that department.

2. Prior to his entry into Government service, petitioner was working as a steno-typist in the T.K.M.College of Engineering, where he had joined duty on 1.3.1983. The petitioner's first appointment was in the pay scale of Rs.350-580. The scale of pay of steno-typist in a private college was revised with effect from 1.3.1989 to Rs.865-1450.

3. While working as steno-typist in the T.K.M. College of Engineering, the petitioner was advised by the Public Service Commission to the post of Confidential Assistant in the Land Use Board under the Revenue Department. The petitioner, therefore, resigned from the

post of Steno-typist from T.K.M.College of Engineering on 15.11.1989 and as such he joined the Land Use Board on 16.11.1989.

4. The pay scale applicable to a Confidential Assistant in the Government Department, as on 16.11.1989, was Rs.865-1450.

5. The petitioner's pay was fixed at Rs.905/- in the scale of pay of 865-1450 when he joined Government service on 16.11.1989. But in December, 1996, the said pay was revised to Rs.1160/- with effect from 16.11.1989. This was done on the basis that the service rendered by the petitioner in the T.K.M.College of Engineering should be taken into account for the purpose of fixing the pay of the petitioner even when he joined Government service. Initially the said fixation of pay was approved by the Audit Department also.

6. In 1999, the Government issued Ext.P3 Government Order, G.O.(P)No.1480/Fin dated 17.6.1999, ordering that approved service put in by teaching and non-teaching staff of Educational institutions coming under the direct payment scheme prior to entry into Government

service will be counted for all service benefits including pension, subject to the conditions laid down in the KSR from time to time. Had Ext.P3 remained in force, the petitioner's pay fixation at Rs.1160/- with effect from 16.11.1989 in the scale of pay of Rs.865-1450 which was made taking into account his previous service in the T.K.M.College of Engineering would have been in order. But on 27.6.2000, the Government as per G.O.(P)No.990/Fin cancelled Ext.P3 order dated 17.6.1999.

7. It is taking note of these aspects that the audit party from the Accountant General's office raised an objection to the irregular pay fixation of the petitioner, in the year 2003. A perusal of Ext.P2 would show that the pay protection granted to the petitioner in December, 1996 was given to him from December, 1989. This was based on a Government Order issued in favour of a Government servant in the year 1982. Apparently, the said Government Order did not have application to any person other than the beneficiary of the said order alone. The KSR does not provide for protection of pay, at the time of entry into Government service, by virtue of any prior service rendered in any private

institution. It was, therefore, that the wrong fixation of pay was directed to be cancelled and excess amount of Rs.85,400/- was directed to be recovered. Subsequent objections filed by the petitioner was looked into and ultimately by Ext.P7 order, the General Manager of the District Industries Centre, acting in pursuance of the inspection report of the Accountant General intimated the petitioner that his pay fixation was irregular and required the petitioner to refund Rs.85,400/- which was the excess pay drawn by him for the period from 16.11.1989 to 31.7.2000. It is Exts.P2 and P7 that have been challenged in this writ petition.

8. In the counter affidavit filed by the respondents, it is contended that obviously the petitioner was entitled to fixation of pay at the minimum of the scale applicable to the Confidential Assistant as on 16.11.1989. There was no question of protection of pay of the petitioner by taking into account the service rendered by him in T.K.M.College of Engineering. Pay protection is available only for prior service rendered in any other Government department or Government undertaking. An irregular fixation

of pay was effected in December, 1996. All that has been done by Ext.P7 is a rectification of the error.

9. I heard learned counsel for the petitioner Mr.N.Sugathan and Government Pleader Mr.Bejoy Chandran.

10. Insofar as the correctness of the stand taken in Exts.P2 and P7 are concerned, I am of the view that in the light of the fact that Ext.P3 was cancelled as per Ext.P4 order, it is quite clear that the fixation of the pay of the petitioner with effect from 16.11.1989 in such a manner as to take into account his previous service in the T.K.M.College of Engineering was clearly irregular. Further more, in the case of the petitioner, his previous service in T.K.M.College of Engineering was taken into account for granting a higher grade. This was also irregular. The petitioner's service could have been reckoned for service benefits only with effect from 16.11.1989. It is significant that a re-fixation from 16.11.1989 was actually given only in December 1996. There was no Rule or a Government Order of a general application, at that point of time, giving pay protection to a Government servant vis-à-vis the pay drawn by him while

employed in the private educational institution. In such circumstances the objection raised by the audit party and ultimately the affirmation of the same was, therefore, legal, regular and justified. Exts.P2 and P7 cannot be found fault with. Insofar as the recovery of the excess pay drawn by the petitioner and directed to be effected under Ext.P7 is concerned, a specific stand has been taken in the counter affidavit by the respondent that the petitioner had furnished a declaration agreeing to refund the excess amount, if any, noticed on further scrutiny and audit of the pay fixation. Learned counsel for the petitioner submits that this declaration to refund the excess drawn, if any, was only in relation to the general pay revision brought about as per G.O.(P)No.600/fin dated 25.9.1993. It has nothing to do with the fixation of pay effected in the year 1996 with effect from 16.11.1989. In my view, even without the said declaration alleged to have been given by the petitioner in relation to the pay revision effected in 1993, it may not be possible for the petitioner to resist recovery of the excess pay drawn in the present case. After all, in the year 1996 a revision in the scale of pay with effect from 16.11.1989, in such a manner

as to give pay protection to the petitioner for the earlier service rendered by him in the T.K.M.College of Engineering would have come about only if the petitioner had specifically made a request in that regard and had also pursued his request. The previous pay fixation in the year 1996 with effect from 16.11.1989 is, therefore, attributable to the petitioner also. In such circumstances there are no reasons why the petitioner should not be called upon to refund the excess amount drawn by him on account of the erroneous fixation of pay effected in 1996; nor are there any exceptional circumstances which should stand in the way of refund of the excess amount drawn by the petitioner.

11. In a recent decision, in W.P.(C)No.10053/06 and connected cases, this court has considered the earlier decisions of this court as regards the legality of the recovery of the excess amount drawn by the petitioners therein. The law as it stands now as declared by the Government as in **Santhakumari v. State of Kerala {2005(4) KLT 649}** case permits recovery of excess amount pursuant to the grant of any benefit which was subsequently cancelled.

In the circumstances, I find no merits in this writ petition and therefore, the same is dismissed. Nevertheless, the second respondent shall grant adequate and sufficient time to the petitioner to refund the excess amount as directed in Ext.P7. If the petitioner makes a request, the respondent shall grant instalment facilities as are reasonable for refund of the amount in question.

Sd/-

(V.GIRI)

JUDGE

sk/

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